

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

In re

Case No.: 18-19441-BKC-EPK

160 ROYAL PALM, LLC,

Chapter 11

Debtor. _____ /

DECLARATION OF GLENN F. STRAUB IN SUPPORT OF (I) SECURED CREDITOR KK-PB FINANCIAL, LLC'S MOTION TO ESTIMATE CLAIM FOR PURPOSES OF CREDIT BIDDING PURSUANT TO 11 U.S.C. §§ 502(c) AND 363(k) [ECF NO. 133]; AND (II) RESPONSE IN OPPOSITION TO THE DEBTOR'S MOTION TO LIMIT CREDIT BIDS WITH RESPECT TO SALE OF SUBSTANTIALLY ALL OF ITS ASSETS [ECF NO. 103]

Glenn F. Straub, being duly sworn, states:

1. I am the Managing Member of KK-PB Financial, LLC ("**KK-PB Financial**") with offices located at 11199 Polo Club Road, Wellington, Florida 33414. In that capacity, I have personal knowledge as to the real estate transaction between KK-PB Financial and Debtor 160 Royal Palm, LLC with respect to the real property located at 160 Royal Palm Way in Palm Beach, Florida 33480 (the "**Royal Palm Way Property**").

2. Except as otherwise indicated herein, all facts set forth in this Declaration are based on my personal knowledge. If I were called upon to testify, I could and would testify competently to the facts set forth herein.

3. This Declaration is submitted in support of Secured Creditor KK-PB Financial, LLC's Motion to Estimate Claim for Purposes of Credit Bidding Pursuant to 11 U.S.C. §§ 502(c) and 363(k) [ECF No. 133] (the "**Estimation Motion**") filed with the bankruptcy court and in opposition to the Debtor's Motion to Limit Credit Bids with Respect to Sale of Substantially All of its Assets [ECF No. 103].

4. **The Sale of the Real Property Located at 160 Royal Palm Way.** In or about August 2013, I sold my interest in the real property located at 160 Royal Palm Way, Palm Beach. In addition to the land, there was a building that was subject to on-going construction and development. I owned that property through 160 Royal Palm, LLC, which I owned 100% of and which was a pass-through entity.

5. I agreed to sell the property to Palm House, LLC, for approximately \$36 million, with seller financing. About 20% of the purchase price was paid at the closing, and I – through my wholly owned, pass-through limited liability company, KK-PB Financial – took back the balance as a \$27.5 million mortgage.

6. In every respect, I considered this a real estate sale.

7. As detailed below, this arm's length transaction was initially memorialized by way of the "*As Is*" *Agreement for Purchase and Sale* dated August 16, 2013 by and between 160 Royal Palm, LLC, and Palm House PB, LLC. Pursuant to the "*As Is*" Agreement, the "Property" being sold is clearly defined as real estate and described as the "Real Property" and the "Appurtenant Property" as follows:

2. SALE AND PURCHASE. In consideration of the mutual covenants herein contained, and other good and valuable consideration, Seller agrees to sell and convey to Purchaser and Purchaser agrees to purchase from Seller, on the terms, covenants and conditions hereinafter set forth, the Property.

2.1 Real Property. That certain real property located in Palm Beach County and legally described on Exhibit "A" attached hereto (the "Real Property").

2.2 Appurtenant Property. To the extent owned and transferable by Seller, all improvements on the Real Property, including all buildings, structures, fixtures (including mechanical systems); all materials currently stored on or off the Property to be used in the construction of the Project, all intangible property used, if any, and owned by Seller in connection with the construction or operation of the Property, including the plans and specifications ("Plans") prepared for the construction of the Project together with an assignment and consent authorizing the transfer and use of the Plans by the architect and engineer of record, trade names (including without limitation, the Palm House name), intellectual property, websites, trademarks, contract rights, guarantees, licenses, permits and warranties; and all right, title and interest of the Seller, if any, in and to any and all streets, roads, highways, easements, accesses and rights-of-way appurtenant to the Real Property, and all right, title and interest of the Seller, if any, in and to any and all covenants, restrictions and agreements benefitting the Real Property.

"As Is" Agreement, Sections 2, 2.1, 2.2. A true and correct copy of the "As Is" Agreement is attached hereto as **Exhibit A**.

8. Because, as I mentioned above, the real estate transaction also required seller financing, the "As Is" Agreement includes a "Financing" clause, which provides that I, as seller, agreed to finance the Royal Palm Way Property in exchange for, among other things, a first mortgage lien on the Property. "As Is" Agreement, Section 28.

9. **Option to Purchase Membership Interest in 160 Palm Beach, LLC.** About two weeks after the parties entered into the "As Is" Agreement, the purchaser requested adding an option clause to transfer the Royal Palm Way Property by assignment of 100% of the membership interest in 160 Royal Palm, LLC that, when exercised, would create pass through entities and minimize transfer taxes. As a result, the parties entered into the First Amendment to "As Is" Agreement for Purchase and Sale dated August 30, 2013, which provides that the

buyer would have the option (but not the obligation) to acquire the membership interest in the 160 Royal Palm, LLC, rather than taking the fee interest. First Amended Agreement, Section 2. A true and correct copy of the First Amended Agreement is attached hereto as **Exhibit B**.

10. **Documentation of Real Estate Transaction.** The arm's length transaction was further memorialized by each party's execution and delivery of certain documents identified as follows:

- a. **"As Is" Agreement for Purchase and Sale dated August 16, 2013.** Agreement by and between 160 Royal Palm, LLC, a Florida limited liability company, as Seller, and Palm House PB, LLC, a Florida limited liability company, or its assigns, as Purchaser, evidencing the Debtor's conveyance of the Royal Palm Way Property to Palm House PB, LLC.
- b. **First Amendment to "As Is" Agreement for Purchase and Sale dated August 30, 2013.** Agreement by and between 160 Royal Palm, LLC, a Florida limited liability company, and Palm House PB, LLC, a Florida limited liability company, pursuant to which Palm House PB, LLC assigned all its rights, title, and interest in the "As Is" Agreement for Purchase and Sale dated August 16, 2013 to Palm House, LLC, a Delaware limited liability company; and pursuant to which Palm House, LLC was permitted to exercise its rights under the options clause (Option to Purchase Membership Interest in 160 RP) to purchase 100% interest in 160 Royal Palm, LLC.
- c. **Second Amendment to "As Is" Agreement for Purchase and Sale dated August 29, 2013.** Agreement by and between 160 Royal Palm, LLC, a Florida limited liability company, and Palm House PB, LLC, a Florida limited liability company, evidencing a Closing Date of August 30, 2013.
- d. **Assignment of Interest in 160 Royal Palm, LLC dated August 30, 2013.** Agreement by and between 160 Royal Palm, LLC and Palm House, LLC, pursuant to which I assigned 100% of my membership interest in 160 Royal Palm, LLC to Palm House, LLC; and pursuant to which KK-PB Financial consented to that assignment.
- e. **Escrow Agreement dated August 30, 2013.** Escrow Agreement by and between Glenn F. Straub, as Seller, Palm House, LLC, a Delaware limited liability company, as Purchaser, and Leslie Robert Evans & Associates, P.A., a Florida professional association corporation as Escrow Agent, pursuant to which I deposited Seven Hundred Forty Four Thousand Four Hundred Forty Two and 00/100 Dollars (\$744,442.00) with the Escrow Agent to resolve certain violations and undisclosed liabilities identified in the Escrow Agreement.
- f. **Promissory Note with Balloon Payment dated August 30, 2013.** 160 Royal Palm, LLC, a Florida limited liability company, executed a Note in favor of KK-PB Financial, LLC, a Florida limited liability company, and promised to pay the principal sum of Twenty-Seven Million Four Hundred

Sixty Eight Thousand Seven Hundred Fifty and 00/100 Dollars (\$27,468,750.00).

- g. **Mortgage dated August 30, 2013.** Florida Real Estate Mortgage, Assignment of Leases and Rents and Security Agreement by and between 160 Royal Palm, LLC, a Florida limited liability company, as Mortgagor, and KK-PB Financial LLC, a Florida limited liability company, as Mortgagee, pursuant to which 160 Royal Palm, LLC granted KK-PB Financial LLC a first priority security interest in the Royal Palm Way Property.

(collectively, the “**Transaction Documents**”). True and correct copies of the Transaction Documents (described in paragraphs 8c through 8g above) are attached hereto as **Composite Exhibit C**.

11. **Escrow Agent’s Fraud and Misconduct.** Leslie Robert Evans of Leslie Robert Evans & Associates, P.A., who was buyer’s counsel, also served as the closing agent for and this transaction and was charged with the responsibility of, among other things, recording the Florida Real Estate Mortgage, Assignment of Leases and Rents and Security Agreement dated August 30, 2013 upon consummation of the transaction. At the time, Evans was a well-known and well-respected real estate attorney, so I naturally assumed he would properly undertake his duties and record KK-PB Financial’s mortgage.

12. But unbeknownst to me, Evans failed to record the Mortgage as required. Fortunately, KK-PB Financial’s counsel discovered that the Mortgage had not been recorded, and he immediately demanded that Evans record the Mortgage. The Mortgage was recorded on March 28, 2014 in the Public Records of Palm Beach County, OR BK 26694, PG 1420.

13. Any allegation that I or KK-PB Financial willfully failed to record the mortgage is as absurd as it is utterly false. Failing to record that mortgage put \$27.5 million of my money at complete risk of loss.

14. Without that Mortgage, the property was susceptible to being encumbered by other liens, effectively wiping out KK-PB Financial’s security interest and claim against the Royal Palm Way Property.

15. **No Participation in Buyers’ Misconduct and Fraud.** I find it hard to believe that the Debtor and his professionals can accuse me of criminal conduct, without any factual basis or evidence to support them.

16. I was not and am not in any way involved with the fraud perpetrated by Robert Matthews, Leslie Evans, and others.

17. Moreover, multiple governmental agencies, including the Federal Bureau of Investigation, Office of the United States Attorney, Office of the State Attorney, and Securities and Exchange Commission have conducted investigations with respect to, among other things, the real estate transaction involving the Royal Palm Way Property. *None* of those investigations resulted in findings of my participation in any wrongdoing or misconduct. This is because there was no wrongdoing or misconduct on my part.

18. **Escrow Agent Indicted.** As a further indication that Evans acted alone when he failed to record KK-PB Financial's Mortgage on a timely basis, I would note that on March 14, 2018, an indictment was filed against Leslie Robert Evans in the case styled *U.S. v. Robert V. Matthews, Leslie R. Evans, and Maria Matthews*, Case No.: 3:18-CR-48 (VAB), in the United States District Court for the District of Connecticut. In the Indictment, Evans is charged with wire fraud, bank fraud, conspiracy, illegal monetary transactions, tax evasion, and aiding and abetting. The Government filed a Superseding Indictment on August 29, 2018. True and correct copies of the Indictment and Superseding Indictment are attached hereto as **Composite Exhibit D**.

19. **The Debtor's Default.** KK-PB Financial is the holder of a senior mortgage against the Royal Palm Way Property and asserts a security interest in that Property of at least **\$37,337,705.77**. Under the terms of the Transaction Documents, the Debtor is required to make payments of principal and interest beginning on November 1, 2014 with a balloon payment due on the Maturity Date, August 30, 2018 (the "**Maturity Date**"). The Debtor defaulted on the loan by failing to make principal and interest payments due and owing on February 1, 2015, and by failing to make all payments due and owing on the Maturity Date. The Debtor's failure to pay all principal and interest by the Maturity Date constituted an Event of Default. The Debtor's prepetition and postpetition indebtedness to KK-PB Financial is **\$37,337,705.77**, plus interest, penalties, and fees and other charges. The Debtor's postpetition indebtedness to KK-PB Financial continues to accrue interest at **\$7,489.93** per diem.

20. **KK-PB Financial's Efforts to Enforce Its Rights.** As a result of the Debtor's default, on September 12, 2014, KK-PB Financial commenced an action against the Debtor and Palm House Hotel in the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach

County, Florida, Case No. 50-2014-CA-011203, to foreclose its interests in the Royal Palm Way Property (the “**Foreclosure Action**”). KK-PB Financial aggressively pursued the Foreclosure Action for four years when the Debtor (through Cary Glickstein¹ as the Court-appointed Receiver) sought relief under chapter 11 of title 11 of the United States Code.

21. KK-PB Financial is entitled to recover reasonable attorneys’ fees and costs incurred in connection with foreclosure of its lien on or to enforce its rights to the Royal Palm Way Property, and all costs incurred in collecting or securing or attempting to collect or secure the loan extended to the Debtor under the Transaction Documents.

22. **The Bankruptcy Case.** On August 2, 2018, Debtor, 160 Royal Palm, LLC, filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “**Petition Date**”) [ECF No. 1], thereby staying the Foreclosure Action. That same day, the Debtor filed its Schedules [ECF No. 1] and thereafter filed amendments [ECF Nos. 40 and 107]. KK-PB Financial is identified as a creditor holding a secured claim in the amount of \$27,468,750.00.

23. As of the Petition Date, Gary Glickstein has served as the pre-petition state court receiver of the Debtor’s assets, is the custodian of the Debtor’s property, and currently serves as the sole and exclusive manager of the Debtor. No post-petition payments have been made to KK-PB Financial and Mr. Glickstein remains in possession of KK-PB Financial’s collateral.

24. On October 5, 2018, the Debtor filed its Motion to Limit Credit Bids with Respect to Sale of Substantially All of its Assets [ECF No. 103], seeking, among other things, to limit KK-PB Financial’s ability to credit bid at the auction and sale of the Royal Palm Way Property as indicated in the Sale Motion [ECF No. 92].

25. On October 10, 2018, KK-PB Financial filed its Motion to Estimate Claim for Purposes of Credit Bidding Pursuant to 11 U.S.C. §§ 502(c) and 363(K) [ECF No. 133], seeking to estimate its secured claim as part of the sale process in order to determine the amount of its maximum credit bid.

¹ Mr. Glickstein is the Court-appointed Receiver in the case styled *Black v. Matthews*, Case No. 50-2014-CA-014846, pending in the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida.

Pursuant to 28 U.S.C. § 1746 and Section 92.525, Florida Statutes, under penalties of perjury, I, Glenn F. Straub, in my capacity as Managing Member of KK-PB Financial, LLC, declare that I have read the foregoing Declaration and that the facts stated herein are true and correct.

Executed on October 17, 2018.

KK-PB FINANCIAL, LLC, a Florida
limited liability company



By: GLENN F. STRAUB
Its: Managing Member